

USDC SCAN INDEX SHEET



THUESON

COSMEDERM

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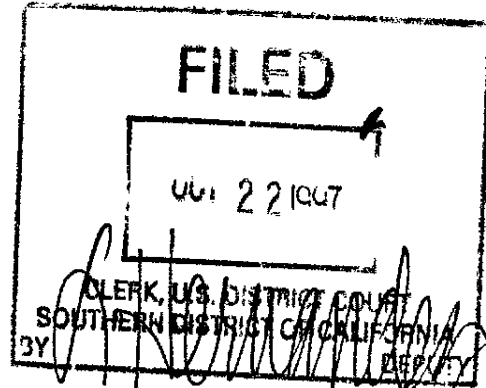
3:97-CV-01902

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NTCREM.

JENNIFER A. KEARNS, ESQ., STATE BAR NO. 125588
 CRAIG E. HUNSAKER, ESQ. STATE BAR NO. 168829
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Attorneys for Defendant
 COSMEDERM TECHNOLOGIES, INC.



UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF CALIFORNIA

'97cv 1902H (CGA)

DAVID O. THUESON,

Plaintiff,

v.

COSMEDERM TECHNOLOGIES, INC.;
 and DOES 1 to 50, inclusive;

Defendants.

Case No. _____

NOTICE OF REMOVAL

TO THE CLERK OF THE ABOVE-ENTITLED COURT:

PLEASE TAKE NOTICE that defendant COSMEDERM TECHNOLOGIES, INC. ("Cosmederm") hereby removes to this Court the state court action described below.

1. On September 15, 1997 an action was commenced in the Superior Court of the State of California for the County of San Diego, entitled David O. Thueson, Plaintiff v. Cosmederm Technologies, Inc., Defendant, as Case No. 714052. A copy of the complaint is attached hereto as Exhibit "A."

2. The first date upon which defendant Cosmederm received a copy of said complaint was September 22, 1997, when it was served with a Summons upon Cosmederm's counsel, Brobeck, Phleger &

1 Harrison LLP. A copy of the Summons and the Notice and
2 Acknowledgment of Receipt is attached hereto as Exhibit "B."

3 3. Cosmederm answered the complaint on Tuesday, October 21,
4 1997. A copy of the Answer is attached hereto as Exhibit "C."


5 4. This action is a civil action of which this Court has
6 original jurisdiction under 28 U.S.C. § 1331, and is one which may
7 be removed to this Court by Cosmederm pursuant to the provisions
8 of 28 U.S.C. § 1441(b), in that it arises under 21 U.S.C. § 355,
9 et seq., and regulations promulgated thereunder. See Complaint,
10 ¶¶ 12, 30-34.

11 Dated: October 22, 1997

JENNIFER A. KEARNS
CRAIG E. HUNSAKER
BROBECK, PHLEGER & HARRISON LLP

12
13
14 By: 

Craig E. Hunsaker
Attorneys for Defendant
COSMEDERM TECHNOLOGIES, INC.


ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address): DENNIS M. GRADY, ESQ. GRADY AND ASSOCIATES 3111 CAMINO DEL RIO NORTH, SUITE 400 SAN DIEGO, CALIFORNIA 92108		TELEPHONE NO.: (619) 528-2230	FOR COURT USE ONLY <div style="text-align: center;">  KENNETH E. MARTONE Clerk of the Superior Court </div>
ATTORNEY FOR (Name): DAVID O. THUESON BAR # 1118461		SEP 15 1997 By: E. BROWN, Deputy	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO <input checked="" type="checkbox"/> CENTRAL COURT, 220 W. BROADWAY, SAN DIEGO, CA 92101-3409 <input type="checkbox"/> NORTH COUNTY BRANCH, 325 S. MELROSE, VISTA, CA 92083-6627 <input type="checkbox"/> EAST COUNTY COURT, 250 E. MAIN, EL CAJON, CA 92020-3913 <input type="checkbox"/> SOUTH BAY COURT, 500 THIRD, CHULA VISTA, CA 91910-5694			
CASE NAME: DAVID O. THUESON V. COSMEDERM TECHNOLOGIES, INC. AND DOES 1-50, inclusive			
CIVIL CASE COVER SHEET (Case Cover Sheets)			CASE NUMBER: <div style="font-size: 1.5em; font-weight: bold;">714052</div>

1. 15 Case category (Insert code from list below for the ONE case type that best describes the case):
- | | |
|---|--|
| 01 Abuse of Process
02 Administrative Agency Review
03 Antitrust/Unfair Business Practices
04 Asbestos
05 Asset Forfeiture
06 Breach of Contract/Warranty
07 Business Tort
08 Civil Rights (Discrimination, False Arrest)
09 Collections (Money Owed, Open Book Accounts)
10 Construction Defect
11 Contractual Arbitration
12 Declaratory Relief
13 Defamation (Slander, Libel)
14 Eminent Domain/Inverse Condemnation
15 Employment (Labor Commissioner Appeals, EDD Actions, Wrongful Termination)
16 Fraud
17 Injunctive Relief | 18 Insurance Coverage/Subrogation
19 Intellectual Property
20 Enforcement of Judgment (Sister State, Foreign, Out-of-Country Abstracts)
21 Partnership and Corporate Governance
22 PI/PD/WD—Auto (Personal Injury/Property Damage/Wrongful Death)
23 PI/PD/WD—Nonauto
24 Product Liability
25 Professional Negligence (Medical or Legal Malpractice, etc.)
26 Real Property (Quiet Title)
27 RICO
28 Securities Litigation
29 Tax Judgment
30 Toxic Tort/Environmental
31 Unlawful Detainer—Commercial
32 Unlawful Detainer—Residential
33 Wrongful Eviction
34 Other: _____ |
|---|--|

2. Type of remedies sought (check all that apply): a. ☒ Monetary b. ☐ Nonmonetary c. ☒ Punitive
3. Number of causes of action: **4**
4. Is this a class action suit? ☐ Yes ☒ No

Date: **September 12, 1997**

..... **DENNIS M. GRADY, ESQ.**
 (TYPE OR PRINT NAME)


 (SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTE TO PLAINTIFF

- This cover sheet shall accompany each civil action or proceeding, except those filed in small claims court or filed under the Probate Code, Family Law Code, or Welfare and Institutions Code.
- File this cover sheet in addition to any cover sheet required by local court rule.
- Do not serve this cover sheet with the complaint.
- This cover sheet shall be used for statistical purposes only and shall have no effect on the assignment of the case.

DENNIS M. GRADY, Bar No. 118461
 KATHLEEN E. HOLDEN, Bar No. 120782
 GRADY AND ASSOCIATES
 3111 Camino Del Rio North, Suite 400
 San Diego, California 92108
 Telephone: (619) 528-2230

C O P
 KENNETH E. MARTONE
 Clerk of the Superior Court

SEP 15 1997

By: E. BROWN, Deputy

Attorneys for Plaintiff DAVID O. THUESON

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO 714052

DAVID O. THUESON,	)	Case No.
)	
Plaintiff,	)	COMPLAINT FOR BREACH OF
	)	CONTRACT, BREACH OF THE
v.	)	COVENANT OF GOOD FAITH AND
	)	FAIR DEALING, WRONGFUL
COSMEDERM TECHNOLOGIES, INC.	)	TERMINATION IN VIOLATION OF
AND DOES 1-50, inclusive,	)	PUBLIC POLICY
)	
Defendants.)	
	)	JURY TRIAL DEMANDED

Plaintiff complains and alleges as follows:

1. Plaintiff, DAVID O. THUESON, is and at all times relevant hereto, has been a resident of the State of California, County of San Diego.
2. Plaintiff is informed and believes and thereby alleges that Defendant, COSMEDERM TECHNOLOGIES, INC., ("Cosmederm") is and at times relevant hereto was a corporation organized and existing under and by virtue of the laws of the State of Delaware, qualified to do business in California, with its principal place of business located in the County of San Diego. Plaintiff is informed and believes on that basis alleges that at some of the times alleged, Cosmederm was a corporation organized and existing

EXHIBIT A

1 under the laws of the State of California with its principal
2 place of business in San Diego, California.

3 3. The true names and capacities of the Defendants named
4 herein as DOES 1 through 50, inclusive, whether individual,
5 corporate, associate, or otherwise, are unknown to Plaintiff who
6 therefore sues such Defendants by fictitious names pursuant to
7 California Code of Civil Procedure Section 474. Plaintiff is
8 informed and believes that Doe Defendants are California
9 residents. Plaintiff will amend this complaint to show such true
10 names and capacities when they have been determined.

11 4. Plaintiff is informed and believes, and thereby alleges
12 that each of the Defendants herein was at all times relevant
13 hereto the agent, employee, or representative of the remaining
14 Defendants and was acting at least in part within the scope of
15 such relationship.

16 **FACTS COMMON TO ALL CAUSES OF ACTION**

17 5. David Thueson began working as Vice-President of
18 Cosmederm, on February 15, 1993. He had worked for approximately
19 three months with no compensation before being offered a salary
20 of \$90,000 per year plus benefits. Throughout his more than four
21 years with the company, plaintiff had been instrumental in almost
22 all aspects of the company. He was hired as Vice President of
23 the company and was the leader in research and development of all
24 company technology and products.

25 6. Plaintiff was hired by Dr. Gary Hahn ("Hahn"), who at
26 that time served as CEO, President and Chairman of the Board of
27 Cosmederm. Throughout his employment, Plaintiff provided
28 outstanding service to the company. He received only one

1 performance evaluation during his years with the company, in
2 August 1996, which rated him as "clearly outstanding" in the
3 performance of his responsibilities for the company.

4
5 7. Plaintiff received promises of continued employment with
6 Cosmederm. On July 10, 1995, Dr. Anne Crossway ("Crossway"),
7 acting CEO of Cosmederm, wrote to plaintiff stating that he would
8 receive additional compensation, "in recognition of [his]
9 commitment to remain an active member of the management team at
10 Cosmederm for the foreseeable future".

11 8. Despite Plaintiff's exceptional performance, history
12 with the company, and promises of continued employment, he was
13 terminated on May 23, 1997.

14 9. At the time of his termination, Plaintiff was overseeing
15 on-going in house research studies, an outside contract clinical
16 study and was involved in significant other ongoing research
17 projects and plans for expansion and deals with several
18 companies. Cosmederm was just a few weeks away from finalizing a
19 major deal with a leading international cosmetics company and its
20 subsidiaries to develop numerous products which would have
21 required significant research. Plaintiff had recently submitted
22 a paper to the journal "Dermatologic Surgery" which was the first
23 of a planned sequence of papers covering the research and
24 technology developed at Cosmederm by Plaintiff. Plaintiff was
25 extremely busy and had no reason to anticipate his functions at
26 the company would be unneeded in the future.

27 10. On approximately May 23, 1997, plaintiff was called
28 into Crossway's office to talk with her and Hahn. At that
meeting Hahn read from a script informing plaintiff that "we have

1 not been doing research and don't anticipate doing any in the
2 near future. Therefore we are terminating your position
3 effective today."

4
5 11. Less than one week later, plaintiff was offered a
6 consulting agreement by Cosmederm to perform basically the same
7 duties for which he had been originally employed. Cosmederm also
8 hired a replacement for plaintiff's position. Thus, the company
9 did not actually eliminate plaintiff's position as he was told
10 when he was terminated.

11 12. Plaintiff was terminated in part because he repeatedly
12 opposed and refused to participate in efforts by the corporation
13 to conduct drug testing without complying with the regulations
14 and requirements imposed by the Federal Drug Administration.
15 Plaintiff was repeatedly pressured by Cosmederm to conduct tests
16 on drugs under the guise of testing cosmetics. The testing of
17 cosmetics was not subject to the same stringent testing
18 requirements as the testing of drugs. The pressure by Cosmederm
19 to participate in such improper testing increased until the time
20 of plaintiff's termination.

21 13. Plaintiff was terminated in part because he confronted
22 and complained to Crossway, about the company's unlawful vacation
23 policy/practices and had taken steps to go to the Board of
24 Directors because she would not rectify the problem. In
25 approximately January of 1997, plaintiff learned that Crossway
26 was working on a draft for a new proposed company policy manual.
27 A draft version of the proposed policy manual was provided to
28 both plaintiff and Hahn for review. A special meeting was
scheduled on January 15, 1997 to review and discuss the manual.

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1 At this meeting, part of the draft policy manual was discussed,
2 but the new proposed, draft vacation policy was not discussed.
3 The draft policy manual contained a new proposed, draft policy
4 which stated that no employee could have more than the equivalent
5 of one and a half years of allotted vacation time on the company
6 books or vacation accrual would stop until the level of their
7 vacation fell below the allowed one and a half years. This
8 provision was never discussed with plaintiff or other employees
9 nor, plaintiff is informed and believes, has the policy manual
10 been finalized or circulated to employees to this date. This
11 proposed, draft policy represented a complete change from the
12 prior policy which had no cap on vacation accrual.

13 14. Nothing further was said to plaintiff regarding the
14 proposed company policy manual or the proposed, draft vacation
15 policy until May of 1997 when, after submitting a request for
16 vacation, plaintiff learned that he had not been accruing
17 vacation since January of 1997. Plaintiff was told by the
18 company accountant that Crossway had directed that no additional
19 vacation was to be accrued pursuant to the proposed, draft
20 policy. Additionally, Crossway attempted to remove the vacation
21 plaintiff had accrued to date in excess of the 1 1/2 year allowed
22 accrual. The accountant stated that this probably was unlawful.

23 15. After learning that vacations had not been accruing
24 since January of 1997, plaintiff complained to Hahn and Crossway.
25 Receiving no response, on approximately May 20, 1997 plaintiff
26 prepared a letter to be submitted to the Board of Directors
27 regarding the unlawful denial of vacation. A draft of this
28 letter was given to Hahn and Mary Jane Charls, Executive

Assistant. Four days later on May 23, 1997, the day of the Board meeting, Crossway terminated plaintiff for false and pretextual reasons. Plaintiff is informed and believes and on that basis alleges that he was terminated in part to prevent him from presenting his information to the Board of Directors and in retaliation for his complaints regarding the company's unlawful vacation policy/practice.

16. Plaintiff's termination was without good, just and sufficient cause.

FIRST CAUSE OF ACTION

(Breach of Contract Against Defendants
Cosmederm and Does 1-25)

17. Plaintiff hereby realleges and incorporates by reference herein each and every preceding paragraph of this complaint.

18. Plaintiff began working for defendant Cosmederm, on or about November 9, 1992 and worked continuously for Cosmederm, until his termination on or about May 23, 1997. During the entire course of plaintiff's employment with defendant, there existed an express and implied in fact, employment contract between plaintiff and defendant which at the time of plaintiff's discharge included, but was not limited to, the following terms and conditions:

a. Plaintiff would remain an active member of the management team at Cosmederm for the foreseeable future;

b. Plaintiff's employment would not be terminated for other than good, just, sufficient cause.

19. This total employment contract was evidenced by various written documents, oral representations to plaintiff by

1 defendant agents and employees, and the parties' entire course
2 of conduct including the following:

3 a. Portions of this contract are embodied in the
4 letter agreement dated July 10, 1995 that is signed by the
5 acting Chief Executive Officer of Cosmederm;

6 b. There was an established policy within Cosmederm
7 known to plaintiff and relied upon by plaintiff, that an
8 employee such as plaintiff, who had performed services as a
9 good and faithful employee, would have secure employment
10 tenure with defendant; that an employee such as plaintiff
11 would be permitted to continue employment unless discharged
12 for good, just and sufficient cause; that an employee such
13 as plaintiff, with an alleged complaint lodged against him
14 would be provided a meaningful opportunity to respond and/or
15 improve; that an employee such as plaintiff would not be
16 discharged without good, just and sufficient cause, and
17 would not otherwise have his job functions taken away or
18 reassigned.

19 c. Representations were made to plaintiff by
20 representatives of Cosmederm regarding the position, terms of
21 employment and Cosmederm's agreement to these terms and
22 conditions.

23 20. Plaintiff's reliance on and belief in and acceptance in
24 good faith, of all of the assurances, promises and
25 representations as listed in the preceding paragraphs above, lead
26 plaintiff throughout his employment with defendant to reasonably
27 believe that his employment was secure and that there existed a
28 contract of continuous employment with defendant Cosmederm, Inc.

1 As independent consideration for this contract of continuing
2 employment, and as evidence of plaintiff's reliance thereon, in
3 addition to performing his regular duties as an employee of
4 defendant, plaintiff refrained from seeking any other employment
5 and refrained from pursuing other career opportunities.

6 21. Plaintiff's lengthy service with the company also lead
7 him to reasonably believe that his employment was secure.

8 22. Plaintiff undertook and continued employment and duly
9 performed all the conditions of the contract to be performed by
10 him. Plaintiff has at all times been ready, willing and able to
11 perform and has offered to perform all the conditions of this
12 contract to be performed by him.

13 23. Despite the contract and representations made to
14 plaintiff and the reliance he placed on them, defendant failed to
15 carry out its responsibilities under the terms of the employment
16 contract in numerous ways including, but not limited to
17 terminating plaintiff's employment on or about May 23, 1997
18 without good, just and sufficient cause.

19 24. As a proximate result of defendant's breach of contract
20 against plaintiff, plaintiff has suffered and continues to suffer
21 substantial losses in earnings, bonuses, deferred compensation,
22 and other employment benefits all to his damage in an amount
23 according to proof.

24 WHEREFORE, plaintiff requests relief as hereinafter
25 provided.

26 / / /

27 / / /

28 / / /

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619-576-7250

SECOND CAUSE OF ACTION

(Breach of the Covenant of Good Faith
and Fair Dealing Against Cosmederm and Does 1-30)

25. Plaintiff hereby realleges and incorporates by reference herein each and every preceding paragraph of this complaint.

26. The aforesaid employment contract contained an implied covenant of good faith and fair dealing by which defendant Cosmederm promised to give full cooperation to plaintiff and his performance under said employment contract and to refrain from doing any act which would prevent or impede plaintiff from performing all the conditions of the contract to be performed by him, or any act that would prevent or impede plaintiff's enjoyment of the fruits of said contract. Specifically, said covenant of good faith and fair dealing required defendant to fairly, honestly, and reasonably perform the terms and conditions of the agreement.

27. Plaintiff, as an individual employee, with no legal representation or prior experience in making such contracts as the one alleged herein, was in an inherently unequal bargaining position in his dealings with defendant Cosmederm, an established concern with large amounts of assets. In addition, once plaintiff committed himself to the above-stated contract, and took the reasonable actions alleged herein in reliance, plaintiff was placed in a particularly vulnerable position because, among other reasons, he gave up actively seeking employment in his field. He had entrusted his entire livelihood to defendant's willingness to perform its obligations under the contract, and

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1 risked suffering grave harm if defendant failed to perform.
2 Defendant was aware of plaintiff's vulnerability in this regard.
3

4 28. Plaintiff is informed and believes that defendant
5 breached its contract with plaintiff without conducting any
6 reasonable investigation concerning its obligations under said
7 contract, without good, just or sufficient cause, for reasons
8 extraneous the contract, and for the purpose of frustrating
9 plaintiff's enjoyments of the benefits of the contract.
10 Accordingly, defendant breached its implied duty of good faith
11 and fair dealing. Further, defendant breached its covenant in
12 regard to plaintiff through its conduct in terminating his
13 employment without cause and for reasons that have nothing to do
14 with legitimate business justification;

15 29. As a result of defendant's violations of said implied
16 covenant of good faith and fair dealing, and their reprehensible
17 and willful conduct toward plaintiff, plaintiff has suffered
18 harm:

19 a. The destruction of plaintiff's valuable property
20 interests, i.e., his prospect of continuing future
21 employment with defendant and receipt of continued
22 compensation and ownership rights in the company;

23 b. Impairment and damage to plaintiff's good name by
24 causing him to be disciplined and discharged with the untrue
25 implication to all future prospective employers that he had
26 been discharged for unsatisfactory performance. Said
27 implication was and is completely untrue and totally without
28 foundation;

c. The incurring of reasonable attorneys' fees in his attempt to obtain the benefits due him under the above stated employment contract with defendant; and,

d. Substantial losses in earnings, bonuses, deferred compensation and other employment benefits and costs incurred in seeking and performing substitute employment;

WHEREFORE, plaintiff requests relief as hereinafter provided.

THIRD CAUSE OF ACTION

(Wrongful Termination in Violation of Public Policy-
21 U.S.C. §355 and regulations thereunder Against COSMEDERM and Does 15-40)

30. Plaintiff hereby realleges and incorporates by reference herein each and every preceding paragraph of this complaint.

31. A fundamental public policy is embodied in Title 21, United States Code §355 and related provisions of law and regulations forbidding any person from introducing into interstate commerce any new drug, unless approval of an application filed with the Federal Drug Administration is effective with respect to such drug. This statutory and regulatory scheme requires extensive testing of drugs before they are introduced to the market. This statutory public policy involves a duty affecting the public at large as society's interests are served by the testing of drugs before they are introduced to the market and used by consumers.

32. Defendants, individually and through their officers, partners, agents, and/or employees acting within the scope of

1 their employment, terminated plaintiff from his employment after
 2 he objected to and refused to participate in his employer's
 3 policies and practices which were designed to circumvent this
 4 important statutory requirement by mischaracterizing its testing
 5 of drugs as testing of cosmetics, which are not subject to the
 6 stringent testing standards required by 21 U.S.C. §355 and
 7 related statutes and regulations. Said actions were committed
 8 by defendants, in violation of fundamental public policies
 9 including those embodied in 21 U.S.C. §355 et seq.

10
 11 33. As a proximate result of defendant's wrongful acts
 12 against plaintiff, plaintiff has suffered and continues to suffer
 13 substantial losses incurred in seeking and performing substitute
 14 employment and in earnings, bonuses, deferred compensation and
 15 other employment benefits and has suffered and continues to
 16 suffer embarrassment, humiliation and mental anguish all to his
 17 damage in an amount according to proof.

18 34. Defendants committed the acts alleged herein
 19 maliciously, fraudulently and oppressively, with the wrongful
 20 intention of injuring plaintiff, from an improper and evil motive
 21 amounting to malice, and in conscious disregard of plaintiff's
 22 rights. Plaintiff is thus entitled to recover punitive damages
 23 from defendants in an amount according to proof.

24 FOURTH CAUSE OF ACTION

25 (Wrongful Termination in Violation of Public Policy-
 Labor Code §200 et. seq. Against COSMEDERM and Does 15-50)

26
 27 35. Plaintiff hereby realleges and incorporates by
 28 reference herein each and every preceding paragraph of this
 complaint.

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 San Diego, Ca. 92108
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1 36. A fundamental public policy is embodied in California
2 Labor Code § 200 et seq., protecting employees from forfeiture of
3 wages, including vested vacation benefits. This statutory public
4 policy involves a duty affecting the public at large as society's
5 interests are served by protecting and preserving the rights of
6 employees to receive wages, including vacation benefits, which
7 are earned and vested.

8 37. Defendants, individually and through their officers,
9 partners, agents, and/or employees acting within the scope of
10 their employment, terminated plaintiff from his employment after
11 he objected to and threatened to report a change in his
12 employer's policies which would result in a forfeiture of vested
13 vacation benefits. Said actions were committed by defendants, in
14 violation of fundamental public policies including those embodied
15 in California Labor Code § 200 et seq.

16 38. As a proximate result of defendant's wrongful acts
17 against plaintiff, plaintiff has suffered and continues to suffer
18 substantial losses incurred in seeking and performing substitute
19 employment and in earnings, bonuses, deferred compensation and
20 other employment benefits and has suffered and continues to
21 suffer embarrassment, humiliation and mental anguish all to his
22 damage in an amount according to proof.

23 39. Defendants committed the acts alleged herein
24 maliciously, fraudulently and oppressively, with the wrongful
25 intention of injuring plaintiff, from an improper and evil motive
26 amounting to malice, and in conscious disregard of plaintiff's
27 rights. Plaintiff is thus entitled to recover punitive damages
28 from defendants in an amount according to proof.

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WHEREFORE, plaintiff requests relief as follows:

1. For damages according to proof including losses incurred in seeking substitute employment and loss of earnings, deferred compensation and other employment benefits;
2. For compensatory damages for losses resulting from humiliation, mental anguish, and emotional distress according to proof;
3. For interest on the amount of losses incurred in earnings, deferred compensation and other employee benefits at the prevailing rates;
4. For punitive damages according to proof;
5. For costs of suit including reasonable attorneys fees;
6. For such other and further relief as the Court may deem proper.

GRADY AND ASSOCIATES *

DATED: September 12, 1997

By: Dennis M. Grady
DENNIS M. GRADY, Attorneys for
Plaintiff, DAVID O. THUESON

2258\complaint

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ASSOCIATES
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Suite 400
San Diego, CA. 92108
619-526-2258

SUMMONS

(CITACION JUDICIAL)

NOTICE TO DEFENDANT: (Aviso a Acusado)

COSMEDERM TECHNOLOGIES, INC. AND DOES 1-50,
inclusive

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

YOU ARE BEING SUED BY PLAINTIFF:

(A Ud. le está demandando)

DAVID O. THUESON

You have **30 CALENDAR DAYS** after this summons is served on you to file a typewritten response at this court.

A letter or phone call will not protect you; your typewritten response must be in proper legal form if you want the court to hear your case.

If you do not file your response on time, you may lose the case, and your wages, money and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may call an attorney referral service or a legal aid office (listed in the phone book).

Después de que le entreguen esta citación judicial usted tiene un plazo de **30 DIAS CALENDARIOS** para presentar una respuesta escrita a máquina en esta corte.

Una carta o una llamada telefónica no le ofrecerá protección; su respuesta escrita a máquina tiene que cumplir con las formalidades legales apropiadas si usted quiere que la corte escuche su caso.

Si usted no presenta su respuesta a tiempo, puede perder el caso, y le pueden quitar su salario, su dinero y otras cosas de su propiedad sin aviso adicional por parte de la corte.

Existen otros requisitos legales. Puede que usted quiera llamar a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de referencia de abogados o a una oficina de ayuda legal (vea el directorio telefónico).

The name and address of the court is: (El nombre y dirección de la corte es)

CASE NUMBER: (Número del Caso)

714052

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

2220 W. BROADWAY 2501-55 SIXTH 325 S. MELROSE 250 E. MAIN
SAN DIEGO, CA SAN DIEGO, CA VISTA, CA EL CAJON, CA
92101-3409 92101-1946 92083-6627 92020-3913

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es)

Dennis M. Grady, Esq., GRADY AND ASSOCIATES, 3111 Camino del Rio North,
Suite 400, San Diego, CA 92108; PH: (619) 528-2230

KENNETH E. MARTONE
CLERK OF THE SUPERIOR COURT

DATE:
(Fecha)

9-15-97

By

(Actuario)

Eva Brown

EVA BROWN

Deputy

(Delegado)

(SEAL)

NOTICE TO THE PERSON SERVED: You are served



1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):
3. ☐ on behalf of (specify):

under:

- ☐ CCP 416.10 (corporation)
☐ CCP 416.20 (defunct corporation)
☐ CCP 416.40 (association or partnership)
☐ other:

- ☐ CCP 416.60 (minor)
☐ CCP 416.70 (conservatee)
☐ CCP 416.90 (individual)

4. ☐ by personal delivery on (date):

NAME AND ADDRESS OF SENDER: KATHLEEN E. HOLDEN, ESQ. GRADY AND ASSOCIATES 3111 CAMINO DEL RIO NORTH, SUITE 400 SAN DIEGO, CA 92108 TELEPHONE NO.: (619) 528-2230 BAR # 1120782	For Court Use Only: <div style="display: flex; justify-content: space-around;">   </div> <div style="display: flex; justify-content: space-around; font-size: small;"> * 3 F 3 1 * * Z A * </div>
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO <input checked="" type="checkbox"/> CENTRAL COURT, 220 W. BROADWAY, SAN DIEGO, CA 92101-3409 <input type="checkbox"/> FAMILY COURT, 1501-55 SIXTH, SAN DIEGO, CA 92101-1946 <input type="checkbox"/> NORTH COUNTY BRANCH, 325 S. MELROSE, VISTA, CA 92083-6627 <input type="checkbox"/> EAST COUNTY COURT, 250 E. MAIN, EL CAJON, CA 92020-3913 <input type="checkbox"/> SOUTH BAY COURT, 500 THIRD, CHULA VISTA, CA 91910-5694	
PLAINTIFF: DAVID THUESON	
DEFENDANT: COSMEDERM TECHNOLOGIES	
NOTICE AND ACKNOWLEDGMENT OF RECEIPT	Case Number: 714052

TO: JENNIFER A. KEARNS

(Insert name of individual being served)

This summons and other document(s) indicated below are being served pursuant to Section 415.30 of the California Code of Civil Procedure. Your failure to complete this form and return it to me within 20 days may subject you (or the party on whose behalf you are being served) to liability for the payment of any expenses incurred in serving a summons on you in any other manner permitted by law.

If you are being served on behalf of a corporation, unincorporated association (including a partnership), or other entity, this form must be signed by you in the name of such entity or by a person authorized to receive service of process on behalf of such entity. In all other cases, this form must be signed by you personally or by a person authorized by you to acknowledge receipt of summons. Section 415.30 provides that this summons and other document(s) are deemed served on the date you sign the Acknowledgment of Receipt below, if you return this form to me.

Dated:

(Signature of sender)

ACKNOWLEDGMENT OF RECEIPT

This acknowledges receipt of: (To be completed by sender before mailing)

1. ☒ A copy of the summons and of the complaint.
2. ☐ A copy of the summons and of the Petition (Marriage) and:
 - ☐ Blank Confidential Counseling Statement (Marriage)
 - ☐ Order to Show Cause (Marriage)
 - ☐ Blank Responsive Declaration
 - ☐ Blank Financial Declaration
 - ☒ Other: (Specify) **Notice of Case Assignment**
Civil Case Cover Sheet

(To be completed by recipient)

Date of receipt:

(Signature of person acknowledging receipt, with title if acknowledgment is made on behalf of another person)

Date this form is signed:

COSMEDERM TECHNOLOGIES, INC.

(Type or print your name and name of entity, if any, on whose behalf this form is signed)

F I L E D
KENNETH E. MARTONE
Clerk of the Superior Court

OCT 21 1997

By: S. MARLETT, Deputy

JENNIFER A. KEARNS, ESQ., STATE BAR NO. 125588
CRAIG E. HUNSAKER, ESQ. STATE BAR NO. 168829
BROBECK, PHLEGER & HARRISON LLP
550 West "C" Street, Suite 1300
San Diego, California 92101
(619) 234-1966

Attorneys for Defendant
COSMEDERM TECHNOLOGIES, INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO

DAVID O. THUESON,	)	Case No. 714052
)	
Plaintiff,)	
	)	ANSWER TO UNVERIFIED COMPLAINT
v.)	
)	
COSMEDERM TECHNOLOGIES, INC.;)	
and DOES 1 to 50, inclusive;)	
)	
Defendants.)	

Defendant Cosmederm Technologies, Inc. ("Defendant") hereby
answers Plaintiff David O. Thueson's ("Plaintiff's") unverified
Complaint ("Complaint") as follows:

I.

ANSWER TO COMPLAINT

1. Pursuant to Code of Civil Procedure section 431.30(d),
Defendant denies each and every allegation of the Complaint and
each cause of action contained therein, both generally and
specifically, and denies that Plaintiff has been damaged in any
sum whatsoever by any act or omission of Defendant.

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COPY
EXHIBIT C

1 II.

2 AFFIRMATIVE DEFENSES

3 As and for its affirmative defenses, Defendant alleges as
4 follows:

5 FIRST AFFIRMATIVE DEFENSE

6 (Failure to State Claim)

7 1. The Complaint, and each and every cause of action
8 contained therein, fails to state facts sufficient to constitute a
9 cause of action against Defendant, its representatives, agents or
10 employees.

11 SECOND AFFIRMATIVE DEFENSE

12 (Statute of Limitations)

13 2. The Complaint, and each and every cause of action
14 contained therein, is barred, either in whole or in part, by the
15 applicable statutes of limitations, including, without limitation,
16 California Code of Civil Procedure sections 337, 339 and 340, and
17 California Government Code sections 12960 and 12965.

18 THIRD AFFIRMATIVE DEFENSE

19 (Waiver)

20 3. Plaintiff has waived each and every cause of action
21 contained in his Complaint.

22 FOURTH AFFIRMATIVE DEFENSE

23 (Estoppel)

24 4. Plaintiff is estopped from maintaining this action, or
25 recovering anything from Defendant, because of his own wrongful
26 conduct.

27 ///

28 ///

1 FIFTH AFFIRMATIVE DEFENSE

2 (Failure to Mitigate)

3 5. Plaintiff has failed to act reasonably to mitigate his
4 alleged damages, if any.

5 SIXTH AFFIRMATIVE DEFENSE

6 (Unclean Hands)

7 6. The injuries suffered by Plaintiff, if any, are the
8 result of his own unclean hands or wrongful conduct.

9 SEVENTH AFFIRMATIVE DEFENSE

10 (Failure to Exhaust Administrative Remedies)

11 7. Plaintiff is barred from any recovery by reason of his
12 failure to exhaust completely the administrative remedies
13 available to him.

14 EIGHTH AFFIRMATIVE DEFENSE

15 (At-Will Employment)

16 8. Plaintiff was, at all times during his employment, an
17 at-will employee, terminable at the election of Defendant, with or
18 without cause. Labor Code § 2922.

19 NINTH AFFIRMATIVE DEFENSE

20 (Business Justification)

21 9. All actions taken by Defendant with respect to
22 Plaintiff's employment were taken for valid, legitimate, non-
23 discriminatory, non-retaliatory business reasons.

24 TENTH AFFIRMATIVE DEFENSE

25 (Workers' Compensation Act)

26 10. The Workers' Compensation Act, California Labor Code §§
27 3200 et seq., provides plaintiff's exclusive remedy for any
28 claimed personal injury, including any claims for physical injury

1 or mental or emotional distress.

2 ELEVENTH AFFIRMATIVE DEFENSE

3 (Prior, Material Breach)

4 11. Plaintiff is barred from any recovery on his contract
5 claims by reason of his own prior, material breach.

6 WHEREFORE, Defendant prays as follows:

7 1. That Plaintiff take nothing by reason of his Complaint
8 and that the same be dismissed with prejudice;

9 2. That Defendant be awarded its costs of suit, including
10 reasonable attorneys' fees, incurred in defending this action; and

11 3. For such other and further relief as this Court deems
12 just and proper.

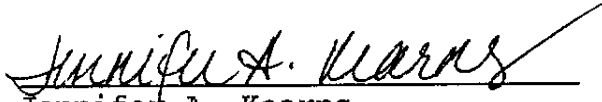
13 Dated: October 21, 1997

JENNIFER A. KEARNS
CRAIG E. HUNSAKER
BROBECK, PHLEGER & HARRISON LLP

15

16

By:


Jennifer A. Kearns
Attorneys for Defendant
COSMEDERM TECHNOLOGIES, INC.

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F I L E D
KENNETH E. MARTONE
Clerk of the Superior Court

David O. Thueson v. Cosmederm Technologies, Inc.
San Diego Superior Court Case No. 714052

OCT 21 1997

PROOF OF SERVICE

By: S. MARLETT, Deputy

I am employed in the City and County of San Diego, California. I am over the age of 18 years and not a party to the within action. My business address is Brobeck, Phleger & Harrison LLP, 550 West "C" Street, Ste. 1300, San Diego, CA 92101.

On October 21, 1997, I served the attached

ANSWER TO UNVERIFIED COMPLAINT

on the party(ies) in this action by placing a true copy thereof in a sealed envelope(s), addressed as follows:

Kathleen E. Holden, Esq.
GRADY AND ASSOCIATES
3111 Camino Del Rio North
Suite 400
San Diego, CA 92108



(BY MAIL) I placed each such sealed envelope, with postage thereon fully prepaid for first-class mail, for collection and mailing at Brobeck, Phleger & Harrison LLP, San Diego, California, following ordinary business practices. I am familiar with the practice of Brobeck, Phleger & Harrison LLP for collection and processing of correspondence, said practice being that in the ordinary course of business, correspondence is deposited in the United States Postal Service the same day as it is placed for collection.



(BY PERSONAL SERVICE) I caused each such envelope to be delivered by hand to the addressee(s) above. The actual Declaration of Personal Service shall be filed upon its receipt, within the applicable statutory deadlines.



(BY HAND-DELIVERY) I delivered by hand each sealed envelope to the addressee(s) above.



(BY FACSIMILE) I transmitted the above-listed document(s) to the party(ies) listed above via facsimile on N/A. No transmission error was reported by the facsimile machine.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed at San Diego, California on October 21, 1997.


Deborah A. Hamer

EXHIBIT C

David O. Thueson v. Cosmederm Technologies, Inc.; and DOES 1 to 50, inclusive;
United States District Court, Southern District of California
Case No.

PROOF OF SERVICE

I am employed in the City and County of San Diego, California. I am over the age of 18 years and not a party to the within action. My business address is Brobeck, Phleger & Harrison LLP, 550 West "C" Street, Ste. 1300, San Diego, CA 92101.

On October 22, 1997, I served the attached

NOTICE OF REMOVAL

on the party(ies) in this action by placing a true copy thereof in a sealed envelope(s), addressed as follows:

Kathleen E. Holden, Esq.
GRADY AND ASSOCIATES
3111 Camino Del Rio North
Suite 400
San Diego, CA 92108

☒ (BY MAIL) I placed each such sealed envelope, with postage thereon fully prepaid for first-class mail, for collection and mailing at Brobeck, Phleger & Harrison LLP, San Diego, California, following ordinary business practices. I am familiar with the practice of Brobeck, Phleger & Harrison LLP for collection and processing of correspondence, said practice being that in the ordinary course of business, correspondence is deposited in the United States Postal Service the same day as it is placed for collection.


☐ (BY PERSONAL SERVICE) I caused each such envelope to be delivered by hand to the addressee(s) above. The actual Declaration of Personal Service shall be filed upon its receipt, within the applicable statutory deadlines.

☐ (BY HAND-DELIVERY) I delivered by hand each sealed envelope to the addressee(s) above.

☐ (BY FACSIMILE) I transmitted the above-listed document(s) to the party(ies) listed above via facsimile on N/A. No transmission error was reported by the facsimile machine.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed at San Diego, California on October 22, 1997.


Deborah A. Hamer

JS 44

(Rev. 7/95)

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

CIVIL COVER SHEET**I. (a) PLAINTIFFS**

David O. Thueson

DEFENDANTSCosmederm Technologies, Inc.,; and
DOES 1 to 50, inclusive;

'97cv 1902H (CGA)

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF _____
(EXCEPT IN U.S. PLAINTIFF CASES)COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT _____
(IN U.S. PLAINTIFF CASES ONLY)NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
TRACT OF LAND INVOLVED

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

ATTORNEYS (IF KNOWN)

Jennifer A. Kearns, Esq.
BROBECK, PHLEGER & HARRISON LLP
550 West "C" Street, Suite 1300
San Diego, California 92101**II. BASIS OF JURISDICTION (PLACE AN "X" IN ONE BOX ONLY)**

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES

(For Diversity Cases Only)

(PLACE AN "X" IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in this State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Incorporated in Another State | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. ORIGIN

(PLACE AN "X" IN ONE BOX ONLY)

- ☐ 1 Original Proceeding
- ☒ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify) _____
- ☐ 6 Multi-district Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

V. NATURE OF SUIT (PLACE AN "X" IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	FEDERAL TAX SUITS
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury-Med Malpractice <input type="checkbox"/> 365 Personal Injury-Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input checked="" type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights			

VI. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE.)

DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY.) 28 U.S.C. Sec. 1331

VII. REQUESTED IN COMPLAINT:CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 ☐

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ YES ☐ NO**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE _____

DOCKET NUMBER _____

DATE

SIGNATURE OF ATTORNEY OF RECORD

October 22, 1997

FOR OFFICE USE ONLY

RECEIPT # 33653 AMOUNT \$150⁰⁰ APPLYING IPP JUDGE MAG. JUDGE